

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

REC'D TN
REGULATORY AUTH.

In re: *Generic Docket to Establish UNE prices for Line Sharing per FCC 99-355 and Risen Cable and Terminating Wire as Ordered in Authority Docket No. 98-00123*

APR 12 07

Docket Number 00-00544

OFFICE OF THE
EXECUTIVE SECRETARY

**DEICA COMMUNICATIONS, INC. d/b/a COVAD COMMUNICATIONS COMPANY'S
OPPOSITION TO
BELLSOUTH TELECOMMUNICATIONS, INC'S MOTION TO STRIKE**

DEICA Communications, Inc. d/b/a Covad Communications Company ("Covad") respectfully requests that the Tennessee Regulatory Authority (the "Authority") deny BellSouth Telecommunications, Inc.'s ("BellSouth") *Motion to Strike That Portion of Covad's Opposition to BellSouth's Petition for Stay Which Constitutes a Second and Untimely Motion for Reconsideration* ("Motion to Strike").

PROCEDURAL BACKGROUND

The Authority issued its "First Initial Order" in the above-captioned docket on April 3, 2002.

On April 10, 2002, BellSouth filed a Petition for Stay seeking a partial stay of the Authority's order ("Petition for Stay"). Specifically, the Petition requested that the Authority stay its decision ordering BellSouth to install dual purpose cards in its NGDLC terminals. The effect of this Order would be to allow a CLEC to provide DSL service without having to collocate at the remote terminal, an option that the Authority found to be "costly, time consuming, and often unavailable." First Initial Order, at 43 (quoting the Federal Communications Commission's Line Splitting Order at ¶ 12).

On April 18, 2002, BellSouth filed a "Motion for Reconsideration" seeking changes to the Authority's First Initial Order ("Motion for Reconsideration"). In regard to Issue 20,

BellSouth repeated the same arguments raised in its Petition for Stay. In fact, BellSouth stated in the reconsideration motion that it “incorporates that pleading [the Petition for Stay] as if fully set out herein.” Motion for Reconsideration, at 12. In essence, BellSouth argued that it should not be ordered to install the dual purpose line cards because the technology is not presently compatible with BellSouth’s systems. “In any event,” BellSouth added, “BellSouth cannot be compelled to provide that functionality to CLECs.” *Id.*, at 12.

On April 24, 2002, Covad filed a brief in opposition to Bellsouth’s Petition for Stay. In the brief, Covad pointed out that BellSouth should, in fact, be able to install the dual purpose line cards since other carriers are already doing it. Covad also pointed out that even if the dual purpose line cards are not yet ready for installation, the Authority could grant CLECs access to the same functionality by ordering Bellsouth to provide CLECs with access to DSLAMs already installed in BellSouth’s remote terminals. Brief, at 5-8. Covad suggested that the Authority’s First Initial Order be amended to include both methods of accomplishing the agency’s goal.

On April 26, 2002, BellSouth filed a Motion to Strike those portions of Covad’s brief which asked that the Authority amend the order to include a requirement that BellSouth grant CLECs access to DSLAMs located in remote terminals. BellSouth contends that this proposal should have been raised in a Motion for Reconsideration and not in response to a Petition for Stay.

ARGUMENT

I. Remote DSLAMs Are Directly Relevant to BellSouth’s Purported Inability to Provide DSL Functionality at Remote Terminals

With regard to remote terminal access, the Authority’s First Initial Order appears to be directed at ensuring that BellSouth cannot deny CLECs access to potential customers by simply moving Central Office functionalities out into the neighborhoods. To address this serious

impediment to providing Tennessee consumers with competitive choices, the Authority properly ordered BellSouth to install dual purpose line cards in its NGDLC terminals for the use of the CLECs. While BellSouth goes to great lengths in its Petition for Stay and in its Motion for Reconsideration to describe its purported inability to comply with the Authority's Order, it conveniently fails to note that it could accomplish the purpose of the Authority's Order without any technical difficulty at all by simply making its remote DSLAM splitters available to CLECs on a UNE basis. Now that Covad has informed the Authority of this option, BellSouth does not want the Authority to consider—or even hear—of this technically feasible option that BellSouth has already deployed to serve its own customers (while at the same time placing those customers off-limits to any CLEC). BellSouth's Motion to Strike should be denied: the information that Covad has presented to the Authority on the issue of remote DSLAMs is directly relevant to BellSouth's attempt to avoid the necessity of providing DSL functionality at remote terminals in Tennessee.

BellSouth's Petition to Stay is based entirely on alleged technical problems associated with dual purpose line cards. Because of these problems, BellSouth claims that it will suffer irreparable harm if forced to install such cards.¹ This complaint disappears, however, if BellSouth can provide CLECs with the same functionality while avoiding deployment of the allegedly troublesome line cards. As explained in more detail in Covad's Opposition to BellSouth's Petition for Stay, this is—in fact—the case: BellSouth is providing DSL functionality at remote terminals to its Tennessee customers right now, an assertion that it does not attempt to refute in any of its many recent filings on this issue. If, as Covad believes, the underlying purpose of the Authority's order is to give CLECs that functionality, regardless of

¹ As described in Covad's Opposition to BellSouth's Petition to Stay, this claim is spurious given SBC Communication's ongoing deployment of dual purpose line cards in NGDLC terminals.

what technology is used, BellSouth can, in fact, readily comply with the Authority's implicit directions.²

It is often easier—and more in its own self-interest—for BellSouth to describe why something cannot be done rather than informing the Authority how it can be done. Covad's alternative proposal does exactly that and goes to the heart BellSouth's "impossibility" claim. If the Authority's true purpose is to make DSL functionality available to CLECs at remote terminals (without requiring CLECs to collocate at the terminal), then Covad's Opposition to the Petition for Stay is directly on-point. BellSouth's Motion to Strike should be denied.

II. Remote DSLAMs Are Directly Relevant to Issues Raised in BellSouth's Motion for Reconsideration

BellSouth appears to be mired in procedural technicalities as it makes filing after filing opposing the Authority's Order that it install dual purpose line cards in NGDLC terminals while at the same time attempting to deny the Authority a complete view of the technical viability of providing DSL functionality at remote terminals through other means that it has already deployed in its network. It is irrelevant to Covad whether the arguments and affidavits raised in Covad's Opposition to BellSouth's Petition for Stay are considered in relation to that Petition or to BellSouth's Motion for Reconsideration. Both pleadings raise identical arguments. In short, if the Authority is more inclined to examine the remote DSLAM issue in the context of a Motion for Reconsideration than in the context of BellSouth's Petition for Stay, Covad respectfully suggests that the Authority consider Covad's brief as a timely response to BellSouth's Motion

² If necessary and appropriate, the Authority could, of course, amend its Order to clarify its intentions. The First Initial Order quotes from an FCC order that "there are other ways in which line sharing may be implemented . . . and we do not mandate any particular means in this Order. Solutions largely turn on the inherent capabilities of equipment that incumbent LECs have deployed, and are planning to deploy, in remote terminals." First Initial Order, at 43 (quoting the FCC's Line Splitting Order at ¶ 12). Covad presumes that the Authority Order quoted this passage to indicate to the parties that the Authority, like the FCC, did not intend to mandate technologies but to mandate functionalities.

for Reconsideration in which Covad suggests that the Authority clarify the intent of its Order by incorporating the DSLAM alternative.

III. The Authority May Wish to Reopen the Record to Clarify Technical Issues with Providing DSL Functionality at Remote Terminals


If, after reviewing the various filings on this issue by BellSouth and by Covad, the Authority feels that technical issues remain as to the viability of providing DSL functionality at remote terminals, the Authority may wish to reopen the evidentiary record to hear additional testimony on this very significant issue. As the Authority is aware, other states are investigating whether or not BellSouth is using its near monopoly control over DSL service to "re-monopolize" the voice market.³ Giving CLECs the ability to offer bundled voice and DSL service, as only BellSouth can do in any area served by a remote DSLAM or an NGDLC terminal, is a matter of critical importance to many CLECs. Rather than expend the time to establish a separate docket, the Authority could explore these issues in an expeditious manner by re-opening the record in this docket.

³ See, e.g. the recently released Kentucky 271 Order at pages 13-14. Case No. 2001-00105, opinion issued April 26, 2002.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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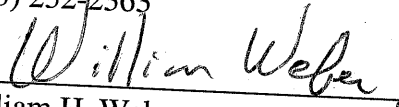

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, and/or hand delivered to the following on this the 2nd day of May, 2002.

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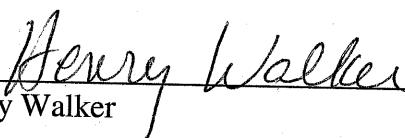
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